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**** EMERGENCY ****
IN THE SUPREME COURT FOR THE STATE OF ALASKA

KEVIN MEYER, in his official capacity as)
the Lieutenant Governor of the State of)
Alaska; GAIL FENUMIAI, in her official)
capacity as the Director of the Alaska)
Division of Elections; and ALASKA)
DIVISION OF ELECTIONS,)
)
Petitioners,)
)
v.)
)
ARCTIC VILLAGE COUNCIL, LEAGUE)
OF WOMEN VOTERS OF ALASKA,)
ELIZABETH L. JONES, and BARBARA)
CLARK,)
) Supreme Court No. S- _____
Respondent.)
Trial Court Case No. **3AN-20-07858 CI**

**** EMERGENCY ****
MOTION FOR STAY PENDING PETITION FOR REVIEW

Under Appellate Rules 205 and 504, the petitioners, the State of Alaska, Division of Elections, Kevin Meyer, and Gail Fenumiai (“the State”) ask the Court for a stay of the superior court’s preliminary injunction pending a decision on the State’s emergency petition for review to prevent the problems that can occur when an election law is enjoined and later reinstated. A decision on this motion is requested as soon as possible.

I. Facts showing the nature of the emergency and the date and hour before which a decision is needed (Appellate Rule 504(d))

A decision on this motion for stay is needed quickly for the same reason that a decision on the State’s petition for review is needed quickly: because the general election is fast approaching and the rules that will apply must be made clear to the

public. On October 5, the superior court issued an order stating that it will enter a preliminary injunction ordering the Division of Elections not to enforce the witness signature requirement for absentee ballots in the upcoming general election and to conduct voter education about this change. The superior court asked the parties to submit a joint proposal for the voter education component of the injunction, which they are submitting by close of business today. The State has filed an emergency petition for review of the superior court's order, but expects that the superior court will issue its injunction imminently. As explained below, the State is moving for a stay in an effort to prevent the superior court's injunction from going into effect before this Court rules on the petition for review, so the State needs a decision from the Court on its motion for stay as soon as possible.

II. Why the Court should grant the stay

The Court should stay the effect of the injunction pending the outcome of the emergency petition for review to avoid the possible disenfranchisement of voters that could result if voters vote their ballots without a witness in reliance on the injunction, and then the injunction is later vacated on appeal, a problem that has occurred in other states.¹ Furthermore, if the Division is required to begin educating voters about the suspension of the witness requirement, and then this Court later reverses the injunction,

¹ See *Democratic National Committee v. Bostelmann*, No. 20-cv-249-wmc 2020 WL 5627186 at 6 (W.D. Wis. Sept. 21, 2020) (noting evidence that voters mailed ballots without witness signatures in reliance on court's injunction that was then stayed on appeal); *id.* at 2 (staying effect of injunction for one week and directing that "NO voter can depend on" the injunction "unless finally upheld on appeal")

the Division will have the difficult job of trying to undo its prior voter education efforts. Some voters may get the original message that the witness requirement was suspended, but not get the message that the injunction was vacated, and be disenfranchised because they fail to have their ballots witnessed.

A motion for stay is subject to the same standard as a motion for preliminary injunction.² Here, the harm to the State—and voters—if the injunction is not stayed pending appeal, but is then vacated is irreparable:³ absentee voters may be disenfranchised if they vote without a witness in reliance on an injunction—or voter education materials about an injunction—which is then vacated. In contrast, a brief stay while the Court considers the petition will not substantially harm the plaintiffs because the State has requested a ruling on the petition by October 12, leaving absentee voters sufficient time to submit their ballots after the Court has ruled. Because the plaintiffs are protected, the balance of hardships standard applies, and a stay is warranted because the State’s petition raises serious and substantial questions on the merits.⁴

Just yesterday, the U.S. Supreme Court stayed the effect of a federal district court injunction against enforcement South Carolina’s absentee ballot witnessing requirement,⁵ and it previously stayed effect of an earlier injunction against enforcement

² See *e.g.*, *Olsen Logging Co. v. Lawson*, 832 P.2d 174, 175 (Alaska 1992).

³ See *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014) (explaining that when weighing relative harms, court should assume defendant will prevail when assessing harm to defendant).

⁴ *Id.*

⁵ *Andino v. Middleton*, 592 U.S. ___, 2020 WL 5887393 (Oct. 5, 2020).

of Alabama’s absentee ballot witnessing requirement.⁶ Thus, the U.S. Supreme Court has clearly shown that it believes such injunctions should be stayed pending appeal.

III. Relief requested in the superior court (Appellate Rule 504(e))

The State is filing a motion for stay in the superior court at the same time as it is filing this motion. For the reasons discussed above, the State cannot wait for a decision from the superior court on the stay before asking this Court for a stay.

IV. Efforts to contact opposing counsel (Appellate Rule 504(f))

Assistant Attorney General Cori Mills emailed counsel for the plaintiffs, Natalie Landreth, and informed her of the State’s intention to file motions for stay of the preliminary injunction in both the superior court and this Court.

V. Contact information of counsel (Appellate Rule 504(c))

As required by Appellate Rule 504, the telephone numbers and office addresses of moving and opposing counsel are:

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⁶ See *Merrill v. People First of Alabama*, — U.S. —, 2020 WL 3604049 (July 2, 2020).

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DATED October 6, 2020.

CLYDE "ED" SNIFFEN
ACTING ATTORNEY GENERAL

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IN THE SUPREME COURT OF THE STATE OF ALASKA

KEVIN MEYER, in his official)	
capacity as the Lieutenant Governor of)	
the State of Alaska; GAIL FENUMIAI,)	
in her official capacity as the Director)	
of the Alaska Division of Elections;)	
and the ALASKA DIVISION OF)	
ELECTIONS,)	Supreme Court No.: S-_____
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Petitioners,)	
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v.)	
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ARCTIC VILLAGE COUNCIL,)	
LEAGUE OF WOMEN VOTERS OF)	
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and BARBARA CLARK,)	
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[PROPOSED] ORDER ON EMERGENCY MOTION FOR STAY

The superior court’s preliminary injunction is STAYED pending the Court’s decision on the State’s emergency petition for review.

Supreme Court for the State of Alaska

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FENUMIAI, in her official capacity as)	
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DIVISION OF ELECTIONS,)	Supreme Court No.: S-_____
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Trial Court Case No.: **3AN-20-07858 CI**

CERTIFICATE OF SERVICE

I certify that on October 6, 2020 a true and correct copy of the **Emergency Motion For Stay Pending Petition For Review, [Proposed] Order on Emergency Motion For Stay**, and this **Certificate of Service** were served by electronic mail to the following:

Honorable Dani Crosby
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Email: CGamet@akcourts.us

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